

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CV 2004-005129

11/30/2004

HON. THOMAS DUNEVANT, III

CLERK OF THE COURT  
L. Gilbert  
Deputy

FILED: 12/02/2004

JOHN THEODORE WILLIAMS, et al.

DAVID B GOLDSTEIN

v.

ALCOR LIFE EXTENSION FOUNDATION INC SID A HORWITZ

DAVID JEREMY BODNEY

MINUTE ENTRY

**Alcor's Objection to Plaintiffs' Statement of Cost – *Pro Hac Vice* Fees**

A.R.S. §12-332(A)(1) provides that costs in the Superior Court include the fees paid to officers and witnesses. Plaintiffs suggest that an attorney is an officer of the court, and consequently, *pro hac vice* fees relating to the attorney's services may be recovered under the costs statute. Arizona law makes a distinction between attorney's fees, those amounts paid for rendering services that reflect and depend upon the attorney's training and legal skill, and taxable costs under statutory authority. *Ahwatukee Custom Estates Management Ass'n, Inc. v. Bach*, 193 Ariz. 401, 404 ¶12 (1999). Payment of the *pro hac vice* fee for Mr. Heer reflects Plaintiffs' willingness to pay extra for him to represent them in Arizona. They are therefore properly deemed attorney's fees, which cannot be recovered in this case.

THEREFORE, IT IS ORDERED denying Plaintiffs' Request for *Pro Hac Vice* Fees.

**Alcor's Objection to Plaintiffs' Form of Judgment/Order**

Alcor objects to Plaintiff's proposed language enjoining Alcor from "further violations of the Arizona Anatomical Gift Act" is overbroad. Plaintiffs John Theodore Williams and Samuel Stewart Williams concede the point only to the extent that they are willing to modify the injunction so that it applies to them alone, and not to other persons seeking documents of gift. Given the dearth of case law, both in Arizona and elsewhere, defining the duties of donees under the Uniform Anatomical Gift Act, a broad injunction is inappropriate. Defendant is to be held to the orders of this Court, but cannot be expected to anticipate future development of this largely

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unexplored area of law. Consequently, this Court declines to include such a broad injunction in its Order.

Alcor's second objection is a technical one. A.R.S. §36-847(B) provides that either the original document of gift or a copy shall be delivered to the donee Alcor, and that the original or copy shall be deposited for safekeeping in any hospital or organ procurement agency. Alcor does not dispute that it has a copy of the original document of gift. Whatever Alcor has is what Plaintiffs are entitled to examine and copy.

The final objection meshes with the Objection to the Lodged Order to Unseal and Compel Delivery of Documents. (Defendant's Motion to Seal Documents was never granted. Thus, an order from the Court to unseal the documents is unnecessary.)

Counsel for Alcor has intimated that Alcor may be filing an appeal of both of the Orders issued in this case. To avoid the necessity for further proceedings to stay enforcement, the Court issues all of its final Orders in this minute entry order as a final judgment of the Court with the effective date delayed until the deadline for filing an appeal has expired.

**JUDGMENT**

WHEREAS, Plaintiffs John Theodore Williams and Samuel Stuart Williams filed the subject Complaint for Declaratory and Injunctive Relief; and

WHEREAS, Plaintiff Barbara Joyce Ferrell's Complaint for Declaratory and Injunctive Relief has previously been dismissed with prejudice pursuant to this Court's August 5, 2004 Order; and

WHEREAS, this Court in its August 31, 2004 minute entry has determined that Plaintiffs John Theodore Williams and Samuel Stuart Williams are "interested persons" within the meaning of Arizona's Anatomical Gift Act, A.R.S. §36-841 *et seq.*, that Plaintiffs are entitled to examine and copy the document of gift pertaining to the late Ted Williams, and that there are no indispensable parties;

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

- 1) No later than December 30, 2004, Defendant Alcor Life Extension Foundation, Inc. ("Alcor") is directed to make available for examination and copying by Plaintiffs John Theodore Williams and Samuel Stuart Williams the document of gift pertaining to the late Ted Williams; and
- 2) Plaintiffs are awarded their reasonable costs and disbursements in this action in the amount of **\$284.20.**

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- 3) Denying Defendant's Motion to Seal Documents. Said documents shall be transmitted by the Clerk to the Clerk of the Superior Court for filing on or after December 30, 2004.
- 4) In lieu of the forms of judgment/order submitted by the parties, this minute entry order is being signed by the Court and shall serve as the formal judgment/order of the Court.
- 5) Filing Defendant's proposed form of Judgment, Plaintiff's proposed form of Judgment, Defendant's Order to Seal, and Plaintiff's proposed form of Order to Unseal **unsigned**.

/ s / HON. THOMAS DUNEVANT, III

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JUDICIAL OFFICER OF THE SUPERIOR COURT